U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GERALDINE KENT and U.S. POSTAL SERVICE,
POST OFFICE, Brighton, MA

Docket No. 01-759; Submitted on the Record;
Issued October 9, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a low back injury while in the performance of duty.

On March 10, 2000 appellant, then a 29-year-old former temporary letter carrier, filed a claim for traumatic injury, alleging that on January 27, 2000 as she was delivering mail at 136 Parsons, Brighton, MA, she slipped on ice and fell down six steps, hurting her lower back and tailbone and her right elbow. Appellant did not stop work and did not seek medical treatment.[1]

Appellant's supervisor noted that appellant was not injured, that she refused medical treatment, that she reported to work on January 28, 2000 and performed her duties without complaints of pain or other problems and that she was terminated on February 8, 2000 due to her work performance. The supervisor, Katherine Jenkinson, noted on the claim form that during the week of February 14, 2000 appellant spoke with Supervisor Giangregario and stated that she was working for an agency "taking care of an elderly woman she lifts daily in and out of the bathtub." Supervisor Giangregario noted that appellant stated that "it is killing my back and I can [no]t be doing this much anymore."

Ms. Jenkinson stated that during this conversation appellant never mentioned her January 27, 2000 injury or fall. On March 13, 2000 appellant contacted the office and spoke with her, claiming she stated that her back was bothering her from the fall on January 27, 2000, but that appellant "could not say where she fell" and that she "did not remember." Appellant requested an injury claim form, which she returned in person on March 20, 2000 stating that she still had not sought medical treatment and did not plan to until her claim was approved. Appellant now identified the accident address as 136 Parsons, Brighton, MA.

[1] After reporting the incident to her supervisor appellant refused medical attention stating that she was not injured.

By letter dated May 2, 2000, the Office of Workers' Compensation Programs advised appellant that she needed to submit further information and evidence to establish her claim. It requested a detailed description of the accident, her immediate actions and symptoms, names of witnesses and medical evidence establishing that an injury was sustained.

In response, appellant stated that she had no medical records to submit, that she thought the injury occurred at 137 or 139 Parsons, Brighton, MA, that after delivering the mail she turned and slipped on ice down the stairs, that she was unaware that she had fractured her tailbone and that she picked up the mail and continued her route. Appellant stated that she informed her supervisors after she completed her route, that shortly thereafter she was told that there was no more work for her and that her tailbone continued to bother her. She claimed that after leaving the employing establishment she had a temporary job where she realized she had seriously hurt her back and that she had to go to a chiropractor.

An April 10, 2000 radiology report indicates no fracture of the pelvis or sacrum, but did demonstrate a deformity of the superior portion of the sacrum.

On May 16, 2000 the employing establishment controverted appellant's claim noting that on January 27, 2000 appellant declined to seek medical treatment and said that it was not needed, that she worked without complaints or problems from January 28, 2000 on until February 8, 2000 when she was terminated for poor work performance and that on February 14, 2000 when appellant spoke with Supervisor Giangregario she never mentioned any January 27, 2000 injury. The employing establishment noted that appellant did inform them that she was employed at an agency for the elderly and was lifting daily and that medical documentation was not submitted until April 25, 2000.

By decision dated June 2, 2000, the Office rejected appellant's claim finding that she had failed to establish fact of injury. The Office found that, accepting appellant's allegations of a fall on January 27, 2000 she had not submitted sufficient medical evidence to establish that any injury was sustained.

By letter dated June 6, 2000, appellant requested an oral hearing, which was held on September 25, 2000. Appellant testified and submitted further medical evidence consisting of a duplicate of the April 10, 2000 radiology report, an April 10, 2000 emergency room intake report and an April 10, 2000 nursing report. The medical report, noted that appellant "fell at work onto her buttocks -- bumped down six steps. Unable to walk for two weeks. Still painful...." The unidentified physician noted that her physical examination results showed a negative pelvic rock and no edema, neurologically intact and a sacral deformity. The physician noted that an x-ray showed a coccyx fracture and that appellant had a preexisting sacral deformity. The nursing report noted that appellant fell over Christmas holiday and was under chiropractic care..

By decision dated December 13, 2000 and finalized December 18, 2000, the hearing representative found that the fact of injury had not been established and that the medical evidence did not establish that appellant sustained an injury.

The Board finds that appellant has failed to establish that she sustained a low back injury on January 27, 2000.

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[2] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[3]

In this case, appellant claimed that she fell down six steps on January 27, 2000 while delivering mail at 136 Parsons, Brighton, MA and injured her low back and coccyx. However, on March 13, 2000 appellant claimed that she "could not say where she fell" and that she "did not remember" where she fell. On March 20, 2000 appellant identified the location of injury as 136 Parsons, Brighton, MA, but in response to a later Office inquiry appellant stated that the injury occurred at 137 or 139 Parsons, Brighton, MA. Thus, the location of the alleged injury is unclear, which casts some doubt on the verity of appellant's claim.

Appellant claimed that the injury occurred on January 27, 2000 but she refused medical care stating that she was not injured, she completed her route and duties on January 27, 2000 without problems, reported to work again on January 28, 2000 and worked without evident problems or complaints until February 8, 2000 when she was terminated. Further, during a conversation with Supervisor Giangregario on February 14, 2000 appellant failed to mention the January 27, 2000 work-related injury, making her first allegations of occupational injury on March 20, 2000. Appellant provided late notification of her claim, continued to work without problems, failed to obtain medical treatment and, after her federal employment discharge, undertook an incongruent subsequent course of action by accepting heavy work lifting and managing the personal care of impaired elderly people, which would be inconsistent with having a previously injured back. Significant doubt was cast on appellant's allegations.

Moreover, appellant failed to submit any probative medical evidence in support of her claim. The April 10, 2000 radiologic evaluation revealed no fracture of her pelvis or coccyx or other lower back traumatic injury. The emergency room report was largely illegible and contained an inaccurate history of injury, noting that appellant was unable to walk following the alleged January 27, 2000 incident for two weeks, when in reality she was able to continue work without problems. An unidentified physician diagnosed a fracture of the coccyx, yet the concurrent x-ray report clearly stated that no fracture was evident. Medical evidence based upon an inaccurate factual and medical history, which is contradicted by objective radiologic evidence, has little probative value and is insufficient to establish appellant's claim. The remainder of the

[2] *John J. Carlone*, 41 ECAB 354 (1989). To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim. *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984); *see also George W. Glavis*, 5 ECAB 363 (1953).

[3] *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

medical evidence was provided by a nurse, who is not considered to be a physician under the Federal Employees' Compensation Act.[4]

As none of the factual or medical evidence is sufficiently probative to establish fact of injury, appellant has not met her burden of proof to establish her federal employment injury claim.

The decisions of the Office of Workers' Compensation Programs dated December 13, 2000 and finalized on December 18 and dated June 2, 2000 are hereby affirmed.

Dated, Washington, DC
October 9, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

[4] *See Vicky L. Hannis*, 48 ECAB 538 (1997) (a nurse is not a physician under the Federal Employees' Compensation Act and thus cannot render a probative medical opinion).